# Tan Wei Mia & Ors v Pentadbir Tanah Daerah Gombak & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(A)-310–09 OF 2015
ABANG ISKANDAR, ZAMANI A RAHIM AND ZALEHA YUSOF JJCA
15 JUNE 2016

*Land Law — Classification of land — Variation — Alienated and freehold land with neither express conditions nor restrictions in interest — Category/classification of law use not stated in grants — Land alienated long before commencement of National Land Code — Application for declaratory order that land subject to category of building since coming into force of National Land Code — Whether application under s 124(1) of the National Land Code for variations of category of land use must be made — Whether declaratory relief sought appropriate relief*

This was an appeal against the decision of the High Court in dismissing the appellants' originating summons ('OS') for a declaratory order that four pieces of land were land subject to the category of 'building' since the coming into force of the National Land Code ('the NLC'). The appellants were proprietor of these four pieces of land. The land were alienated and were freehold land with neither express conditions nor restrictions in interest. There was also no category of land use stated on the grants because these land were alienated in 1929, long before the commencement of the NLC. In pursuing a development project, a company known as Ofisgate Sdn Bhd had applied to the first respondent for the planning permission. The first respondent in turn replied that since there is no specific category of land use, it is incumbent upon the appellants to first, apply for a variation of the title to change the lots' land use from 'Tiada' to 'building'. The appellants objected to the requirements to apply for the affixing or variation of the land use category of the lots and later filed the OS for the declaration order which was dismissed. The High Court was of the view that the lots fell squarely on the application of s 53(3) of the NLC since the lots were alienated before the commencement date of the NLC. However Her Ladyship felt that she is bound by the decision of the Federal Court in *Collector of Land Revenue, Federal Territory v Garden City Development Berhad* [1979] 1 MLJ 223 ('Garden City') which decided, inter alia, that in order to use the land for building, the owner has to apply for the imposition of category of building under s 124 of the NLC. Although on appeal the Privy Council had allowed the appeal, the JC was of the view that the decision remains a good law as this portion of Federal Court decision was not reversed or even canvassed in the Privy Council decision. Her Ladyship viewed that the Privy Council did not even consider s 124 of the NLC. Hence, this appeal. The issues that arose

were whether the appellants needed to apply under s 124(1) of the NLC for variations of the category of land use unto the titles of the lot when it was already accepted that the said lots fell within the category of building under s 53(3) of the NLC; and whether the declaratory relief sought by the appellants was the appropriate relief.

**Held**:

(1) The JC erred in choosing to follow the Federal Court decision instead of the Privy Council decision in *Garden City*. The Privy Council in *Garden City* considered whether the s 128 of the NLC notice was correctly issued by the respondent. The notice under s 128 was a notice for summary action to secure remedying of the breach of a condition. The condition which was purportedly breached by the landowner in that case was the requirement for the appellant to apply under s 124 of the NLC to alter the condition an express condition on the land. The Privy Council held that the land could not be lawfully used for agricultural or industrial purposes and there was no prohibition against using the land for building purposes. The Privy Council then restored the High Court's order cancelling the s 128 notice. Hence, there was no reason to disagree with the appellants that by so doing, the Privy Council effectively held that it was not necessary for the appellant to apply for conversion under s 124. Thus, there was essentially a complete reversal of the Federal Court decision (see paras 20 & 22).

(2) The Privy Council in *Garden City* held that the land could not be lawfully used for agricultural or industrial purposes and there is no prohibition against using the land for building purposes. It was not necessary for the landowner to apply for conversion, that was, an application under s 124 was not necessary in order for the landowner to use the land for building purposes. The JC erred in law by deciding that she was not bound by the Privy Council decision in *Garden City* simply because s 124 was not mentioned by the Privy Council in its judgment (see para 124).

(3) It was the respondents' contention that the declaratory relief sought for by the appellants is contrary to the requirement of s 124 of the NLC which authorises the state authority to vary the category of land use. In other words the relief was like asking the court to usurp the statutory authority and jurisdiction of the state authority. Such declaration was on point of law namely on category of land use; as the appellants are claiming for a declaration that the land are and have been since the coming into force of the National Land Code, land subject to the category of 'building' (see paras 25–26).

**[Bahasa Malaysia summary**

Ini ialah suatu rayuan terhadap keputusan Mahkamah Tinggi yang menolak saman pemula ('SP') perayu untuk suatu perintah perisytiharan bahawa empat bidang tanah merupakan tanah yang termasuk dalam kategori bangunan sejak Kanun Tanah Negara ('KTN') berkuat kuasa. Perayu ialah tuan punya keempat-empat bidang tanah ini. Tanah tersebut telah diberi hak milik dan merupakan tanah pegangan kekal yang tidak mempunyai syarat nyata mahupun sekatan kepentingan. Kategori penggunaan tanah juga tidak dinyatakan dalam geran kerana tanah ini telah diberi hak milik pada tahun 1929, lama sebelum permulaan kuat kuasa KTN. Dalam usaha untuk mendapatkan suatu projek pembangunan, sebuah syarikat dikenali sebagai Ofisgate Sdn Bhd telah memohon kebenaran perancangan kepada responden pertama. Responden pertama kemudiannya telah memaklumkan bahawa memandangkan kategori penggunaan tanah tidak dinyatakan secara spesifik, maka perayu hendaklah terlebih dahulu memohon pengubahan pada hak milik bagi menukar kategori penggunaan tanah kesemua lot itu daripada 'Tiada' kepada 'bangunan'. Perayu telah membantah terhadap kehendak untuk memohon penetapan atau pengubahan kategori penggunaan tanah kesemua lot itu dan kemudiannya memfailkan SP untuk perintah perisytiharan itu yang kemudiannya ditolak. Mahkamah Tinggi berpendapat bahawa kesemua lot itu termasuk di bawah permohonan di bawah sub-s 53(3) KTN memandangkan kesemua lot itu telah diberi hak milik sebelum tarikh kuat kuasa KTN. Walau bagaimanapun, Yang Arif hakim merasakan yang beliau terikat dengan keputusan Mahkamah Persekutuan dalam kes *Collector of Land Revenue, Federal Territory v Garden City Development Berhad* [1979] 1 MLJ 223 ('Garden City') yang telah memutuskan, antara lain, bahawa untuk sesuatu tanah digunakan untuk bangunan, pemilik tanah itu hendaklah memohon untuk pengenaan kategori bangunan di bawah s 124 KTN. Walaupun semasa rayuan kes ini Privy Council telah membenarkan rayuan tersebut, pesuruhjaya kehakiman berpandangan bahawa keputusan kes *Garden City* oleh Mahkamah Persekutuan itu kekal sebagai suatu undang-undang yang kukuh kerana keputusan Privy Council tidak menyentuh mahupun mengakaskan keputusan Mahkamah Persekutuan berhubung dengan isu ini. Yang Arif hakim berpandangan bahawa Privy Council tidak langsung mempertimbangkan s 124 KTN. Oleh yang demikian, rayuan ini dibuat. Isu yang dibangkitkan ialah sama ada perayu perlu untuk membuat permohonan di bawah sub-s 124(1) KTN untuk mengubah kategori penggunaan tanah pada hak milik lot itu apabila fakta bahawa lot tersebut termasuk dalam kategori bangunan di bawah sub-s 53(3) KTN telahpun diterima; dan sama ada relif perisytiharan yang diminta oleh perayu merupakan relif yang wajar.

**Diputuskan:**

(1) Pesuruhjaya kehakiman telah terkhilaf apabila memilih untuk mengikut keputusan Mahkamah Persekutuan dan bukan keputusan Privy Council

dalam kes *Garden City*. Pihak Privy Council dalam kes *Garden City* mempertimbangkan sama ada notis di bawah s 128 KTN telah dikeluarkan dengan betul oleh responden. Notis di bawah s 128 ialah notis untuk suatu tindakan terus bagi memastikan pemulihan kemungkiran suatu syarat. Syarat yang dikatakan telah dimungkiri oleh pemilik tanah dalam kes itu ialah berhubung dengan kehendak bagi perayu untuk memohon di bawah s 124 KTN untuk mengubah syarat nyata pada tanah dalam kes itu. Privy Council memutuskan bahawa tanah itu tidak boleh digunakan secara sah untuk pertanian atau bagi maksud perindustrian dan tidak terdapat halangan untuk menggunakan tanah itu bagi maksud bangunan. Privy Council kemudiannya memulihkan perintah oleh Mahkamah Tinggi yang membatalkan notis s 128 itu. Oleh yang demikian, tidak ada sebab untuk tidak bersetuju dengan perayu bahawa dengan berbuat demikian, Privy Council telah memutuskan bahawa tidak ada keperluan untuk perayu memohon suatu penukaran di bawah s 124. Maka, keputusan Mahkamah Persekutuan telah diakaskan sepenuhnya (lihat perenggan 22 & 22).

(2) Privy Council dalam kes *Garden City* memutuskan bahawa tanah itu tidak boleh digunakan secara sah unuk pertanian atau bagi tujuan perindustrian dan tidak terdapat halangan untuk menggunakan tanah itu bagi maksud bangunan. Ia bukanlah suatu keperluan bagi pemilik tanah untuk memohon penukaran, iaitu, permohonan di bawah s 124 bagi membolehkan pemilik tanah menggunakan tanah itu bagi maksud bangunan adalah tidak perlu. Pesuruhjayan kehakiman telah terkhilaf dari segi undang-undang apabila memutuskan bahawa beliau tidak terikat dengan keputusan Privy Council dalam kes *Garden City* semata-mata kerana s 124 tidak disebut oleh Privy Council dalam penghakimannya (lihat perenggan 24).

(3) Responden menghujahkan bahawa relief perisytiharan yang diminta oleh perayu adalah bercanggah dengan kehendak di bawah s 124 KTN yang memberi kuasa kepada pihak berkuasa negeri untuk mengubah kategori penggunaan tanah. Dalam erti kata lain, relif itu seolah-olah meminta mahkamah untuk merampas kuasa statutori dan bidang kuasa pihak berkuasa negeri. Perisytiharan tersebut adalah merupakan suatu perkara undang-undang iaitu berkenaan dengan kategori penggunaan tanah; memandangkan perayu menuntut suatu perisytiharan bahawa tanah itu telah dan memang, sejak Kanun Tanah Negara mula berkuatkuasa, merupakan tanah yang termasuk di bawah kategori 'bangunan' (lihat perenggan 25–26).]

**Notes**

For cases on classification of land in general, see 8(3) *Mallal's Digest* (5th Ed, 2015) paras 3120–3126.

**Cases referred to**

*Collector of Land Revenue, Federal Territory v Garden City Development Berhad* [1979] 1 MLJ 223, FC (refd)

**Legislation referred to**

Specific Relief Act 1950 s 41
Land Acquisition Act s 8
National Land Code ss 8, 8(1)(e), 53(2), (3), 124, 124(1), 127, 128

**Appeal from**: Originating Summons No 24–754–06 of 2014 (High Court, Shah Alam)

*Raymond Mah (Choo Mun Wei with him) (Mah Weng Kwai & Assoc) for the appellants.*
*Ahmad Fuad Othman (Mohd Abdul Hakim Mohd Ali with him) (Legal Officer, Selangor Legal State Offices) for the respondents.*

**Zaleha Yusof JCA:**

**[1]** This is an appeal from the decision of the High Court at Shah Alam that dismissed the appellants' originating summons ('OS') for a declaratory order that four pieces of land ie Lots 841 to 844, Mukim Ulu Kelang, Daerah Gombak, Negeri Selangor are land subject to the category of 'building' since the coming into force of the National Land Code ('the NLC').

**[2]** The appellants are proprietor of these four pieces of land. The land were alienated on 28 June 1929 and are freehold land with neither express conditions nor restrictions in interest. The grants of the land state 'SYARAT-SYARAT NYATA: TIADA' and 'SEKATAN-SEKATAN KEPENTINGAN: TIADA'. There is also no category of land use stated on the grants because these land were alienated in 1929, long before the commencement of the NLC in 1966. The grants state 'KATEGORI PENGGUNAAN TANAH: Tiada'.

**[3]** Lots 841 and 843 are located along Jalan Hulu Kelang, Mukim Hulu Kelang and Lots 842 and 844 located behind Lots 841 and 843. Lots 841 and 843 were acquired under s 8 of the Land Acquisition Act 1960 for two separate projects namely the 'Projek Lebuhraya Jalan Duta-Hulu Kelang (DUKE)' and 'Projek Skim Bekalan dan Pengagihan Air Langat II-Fasa 1(Cadangan Jajaran Paip Air Koridor (Utara), Mukim Hulu Kelang, Daerah Gombak, Negeri Selangor (KTAK)'. The former was published in the Selangor State Government *Gazette* No 3521.

**[4]** One Ofisgate Sdn Bhd ('Ofisgate') a private limited company intended

to develop the appellants' Lots 842 and 844 in a project known as 'Agro Pelancongan'. In pursuing this development project, Ofisgate had applied to the Pejabat Tanah Daerah Gombak ('the first defendant') for the planning permission to commence the Agro Pelancongan development project vide its letter dated 27 December 2010.

**[5]** The first respondent in turn replied that since there is no specific category of land use, it is incumbent upon the appellants to first, apply for a variation of the title to change the lots' land use form 'Tiada' to 'building'.

**[6]** The appellants objected to the requirements to apply for the affixing or variation of the land use category of the lots as required by the first respondent on the ground that the Court of Appeal had previously, in two separate reference for compensation regarding the acquisition of Lots 841 and 843 decided that Lots 841 and 843, and also the Lots 842 and 844 should be categorised as 'building' land. Thus it is incumbent upon the respondent to make the necessary variations without the necessity of the appellants making an application to the respondent.

**[7]** In response, the second respondent contended that the decision of the land reference for compensation referred to and appended by the appellants is not related to the procedure of varying the category of land use of the lots regarding the appellants application for planning permission but are only relevant in determining the appropriate compensation from the acquisition of the said Lots 841 and 843.

**[8]** Unhappy, the appellants filed the OS for the declaration order mentioned earlier; and now the appeal before us since the OS was dismissed.

## DECISION OF THE HIGH COURT

**[9]** The learned judicial commissioner ('JC') was of the view that Lots 842 and 844 fall squarely on the application of s 53(3) of the NLC since the lots were alienated before the commencement date of the NLC. However Her Ladyship felt that she is bound by the decision of the Federal Court in *Collector of Land Revenue, Federal Territory v Garden City Development Berhad* [1979] 1 MLJ 223 which decided, inter alia, that in order to use the land for building, the owner has to apply for the imposition of category of building under s 124 of the NLC. Although on appeal the Privy Council had allowed the appeal, the learned JC was of the view that the decision remains a good law as this portion of Federal Court decision was not reversed or even canvassed in the Privy Council decision. Her Ladyship viewed that the Privy Council did not even consider s 124 of the NLC. Even if the lots are impliedly 'building' land, it remains that in order for the title to be varied from 'tiada' to 'building', the

appellants are still subject to the remedies and procedures under the NLC in order to have such variations registered and affixed on the title. The variations fall squarely within the ambit of s 124 of the NLC and the said s 124 is sufficiently wide to cover the variation of any category of land use including the said Lots 842 and 844.

**[10]** Her Ladyship was also of the view that the earlier decision and orders of the Court of Appeal only pertained to a land reference. As such the orders and decision were made exclusively for the purposes of the determination of the appropriate compensation payable. The learned JC was also of the view that the fact that s 124 of the NLC is the proper procedure and remedy which is readily available to be opted by the appellants, there is therefore nothing to warrant the exercise of the court's discretion in granting such declaratory order to the appellants.

## OUR DECISION

**[11]** We have examined carefully the record of appeal, grounds of judgment of the learned JC and submissions made by both parties. We are of the view that the appeal revolves around two main issues which are as follows:

(a) whether the appellants still need to apply under s 124(1) of the NLC for variations of the category of land use unto the titles of Lots 842 and 844 when it is already accepted that the said lots fall within the category of building under s 53(3) of the NLC; and

(b) whether declaratory relief sought by the appellants is the appropriate relief.

**[12]** On the first issue, s 53 of the NLC provides, inter alia, as follows:

> 53 Conditions affecting use of lands alienated before commencement until category of land use imposed.
>
> (1) This section applies to all land alienated before the commencement of this Act other than land which, immediately before that commencement, is subject to an express condition requiring its use for a particular purpose.
>
> (2) All the land to which this section applies which is at the commencement of this Act —
>
> (a) Country land; or
>
> (b) Town or village land held under Land Office title, shall become subject at that commencement to implied condition that it shall be used for agricultural purposes only:
>
> Provided that this condition —
>
> (i) shall not prevent —

(a) the use of any part of the land for any purpose for which it could (under section 115) be lawfully used if it were subject instead to the category 'agriculture'; or

(b) the continued use of any part thereof for any industrial purpose for which it was lawfully used immediately before the commencement of this Act; and

(ii) shall not apply to any part of the land which is occupied by or in conjunction with —

(a) any building lawfully erected before that commencement; or

(b) any building erected after that commencement, the erection of which would (under section 115) be lawful if the land were subject instead to the category 'agriculture'.

(3) All other land to which this section applies shall become subject at the commencement of this Act to an implied condition that it shall be used neither for agricultural nor for industrial purposes.

**[13]** Subsection 53(2) talks about land held under the land office title. Whereas sub-s 53(3) talks about 'all other land' which means land held under the registry title. The learned JC in our view had correctly accepted that sub-s 53(3) of the NLC applies to Lots 842 and 844 owing to the facts that the land were alienated before the commencement date of the NLC and that the land are village land held under the registry title. However Her Ladyship felt that s 124 of the NLC is still applicable, following the Federal Court decision in *Garden City*'s case. She gave her reasons as follows:

[31] A plain reading of the catchwords above would reveal that s 124 of the Code was specifically omitted from being deliberated in the decision of the Privy Council.

[32] Furthermore, even what was held by the Privy Council in its decision mentions nothing at all on the propriety of an application under s 124 of the Code. The Privy Council has never made any finding on the propriety of an application under s 124 of the Code. The decision reads:

(1) *the stamping of the words 'Lease for agricultural land' on the original lease could not in itself have the effect of imposing a condition for use for agriculture only and in the circumstances it was not possible to infer from the lease an intention to restrict the use of the land to agriculture;*

(2) *as the land was town land held under registry title, the provisions of* s 53(3) of the National Land Code applied to the land with the result that there was an implied condition that it shall be used neither for agricultural nor for industrial purposes;

(3) *there is no ground for reading into* s 53(3) of the National Land Code a general prohibition against use for building purposes;

(4) *in a timeous appeal against the* s 128 notice, the appellants were in a position to open up all questions upon which its validity depended, in

particular the questions whether their land was subject to the condition of agricultural use only and whether on a proper construction of s 53 use of it for building purposes was prohibited'

[33] The decision only touches on the rights to appeal under s 418 of the Code and also a more or less an academic question on the reading of s 53(3) of the Code on whether it prohibits the use of land to erect buildings or otherwise.

[34] Thus, it is reiterated that the Federal Court's decision on the propriety of an application under s 124 of the Code for a variation of category of land use in light of lands under s 53(3) of the Code, remains a good law. Therefore, this court is bound to follow the decision of the Federal Court.

**[14]** Learned counsel for the appellants submits that this court is bound by the decision of the Privy Council in that case and not of the Federal Court.

**[15]** The facts of the *Garden City* case, as set out in the judgments of the High Court and Federal Court (reported in, *Collector of Land Revenue, Federal Territory v Garden City Development Berhad* [1979] 1 MLJ 223) are as follows:

(a) the appellant landowner had received, in response to its application for subdivision of its land, a requirement by the Land Executive Committee for the landowner to comply with certain conditions including imposition of the category building under s 124 of the NLC;

(b) the landowner did not comply with the conditions;

(c) the respondent, the Collector of Land Revenue, claimed that the land was thus liable to forfeiture under s 127 of the NLC (liability to forfeiture for breach of condition) and issued to the landowner a notice under s 128 of the NLC (summary action to secure remedying of breach of condition);

(d) the landowner applied to the High Court for an order that the respondent cancel the s 128 notice on the ground that the notice was bad and invalid. The landowner contended that it was not necessary for it to apply for conversion; and

(e) the High Court allowed the landowner's application, but the decision was overturned on appeal to the Federal Court. The Federal Court held that an application for conversion under s 124 was necessary.

**[16]** The landowner appealed to the Privy Council and the appeal was allowed. The Privy Council held, at 100H, that:

*This provision clearly prevents the appellants' land being lawfully used for agricultural or industrial purposes*. But the respondent argues that by implication it also precludes the lawful use of the land for the erection of a building such as Wisma Central. It is unnecessary, for the disposal of this argument, to enter upon an examination of the general scheme embodied in the Code in relation to the eventual allocation of all

land into one or other of the three categories of land use'agriculture', 'building' and 'industry', and the procedures whereby this categorisation may take place in relation to any particular land. In their Lordships' opinion the argument is wholly unsound. It seeks to derive from the provisos to the main enactment of the subsection an inference enlarging the scope of that enactment so that the implied conditions thereby imposed would prohibit not only use for agriculture or industry but the erection of buildings generally. No such inference can properly be drawn. As a general rule, the purpose of a proviso is to relax to some extent the full rigour of the main enactment, and the provisos to s 53(3) present no features indicating that they constitute an exception to the rule. The purpose of proviso (i) is clear. It is to preserve the lawfulness of use for agricultural or industrial purposes which was established before the Code came into force. As for proviso (ii), it does not yield up the whole of its meaning easily, and the word 'instead' in para (b) is particularly hard to construe. But para (a) clearly exempts from the prohibition of agricultural and industrial use any building, or land ancillary thereto, erected before the commencement of the Act. In regard to para (b), it is to be observed that s 116 of the Code, which deals with the category of land use 'building' and the implied conditions applicable to that category, contemplates by subsection (1)(b) that there may be exceptions to the general prohibition against the use of land in this category for agricultural or industrial purposes. The intention of para (b) of proviso (ii) appears to be to provide similar exeptions for land to which s 53(3) applies. *There is therefore no good ground for reading into* s 53(3), by necessary implication, a general prohibition against use for building purposes. (Emphasis added.)

**[17]** We were shown that subsequent to the *Garden City,* decision by the Privy Council, and based on the advice of the Attorney General's Chambers, the Department of the Director-General of Land and Mines (Federal), Ministry of Natural Resources and Environment issued a Pekeliling Ketua Pengarah Tanah dan Galian Persekutuan Bilangan 1/2002 ('Director-General's Circular') in relation to conditions affecting use of land alienated before 1 January 1966, that is the commencement date of the NLC. Significantly, the Director-General's Circular confirms that an application under s 124 is not necessary.

Paragraph 6.2.2. Of the Director-General's Circular states:

Bagi *tanah bandar atau tanah pekan* yang hak milik didaftarkan di bawah *hak milik Pendaftar* sekiranya *tidak ditetapkan syarat kegunaan tanah* maka ianya adalah tertakluk kepada Seksyen 53(3) KTN iaitu syarat tersirat bahawasanya tanah itu *tidak boleh digunakan bagi maksud-maksud pertanian mahupun perindustrian*, sebaliknya juga *tidak boleh disifatkan termaklum adanya suatu syarat bahawa tanah itu tidak boleh digunakan bagi maksud-maksud bangunan*. Ini memberi makna sebagaimana yang dijelaskan oleh: Jabatan Peguam Negara melalui suratnya PN 33091/1 Jld & betarikh 6 September 1982 (efek *keputusan Privy Council*), bahawa *pemilik berdaftar sesuatu tanah yang termasuk dalam bidang kuasa* seksyen 53(3) *boleh mendirikan sesebuah bangunan* (bagi mana-mana maksud yang tersebut dalam seksyen 116(4) *di atas tanah sedemikian tanpa dikehendaki memohon kepada Pihak Berkuasa Negeri di bawah* seksyen 124(1)(a) bagi pengenaan kategori 'bangunan' sebagai kategori penggunaan tanah atau di bawah seksyen 124(1)(c) bagi

pengenaan syarat-syarat nyata baru bahawa tanah itu hendaklah digunakan bagi mendirikan bangunan dan jenis spesifik sahaja. Oleh kerana tiada apa-apa jua permohonan dikehendaki di bawah seksyen 124(1) KTN, ini bererti bahawa Pihak Berkuasa Negeri tidak diberikuasa mengenakan premium tambahan di bawah seksyen 124(5)(a) berkenaan dengan tanah sedemikian yang akan digunakan bagi mendirikan bangunan.

English translation:

For *town land or village land* which title is registered under a *Registry title*, if *conditions for use of land is not specified*, theland would be subject to Section 53(3) NLC that is the implied condition that the land *cannot be used for agricultural or industrial purposes*. On the other hand, it also *cannot be characterised to indicate that there is a condition that the land cannot be used for building purposes* . This brings the meaning as explained by: the Attorney General's Chambers by its letter PN 3309/1 Vol 7 dated 6 September 1982 (effect of the *Privy Council decision*), that *the registered proprietor of land falling within the purview of* section 53(3) *can erect a building* (for any of the purposes stated in section 116(4) *on the said land without the need to apply to the State Authority under* section 124(1)(a) for imposition of the category 'building' as category of land use or under section 124(1)(c) for imposition of new express conditions that the land is to be used for the erecting of building and specific types only. As no application are required under section 124(1) NLC, this means that the State Authority is not authorized to impose additional premium under section 124(5)(a) in respect of such land which will be used for the erecting of buildings.

**[18]** Learned assistant to the state legal advisor for the respondents submits that the learned JC was entitled to follow the decision of the Federal Court in *Garden City* on s 124 of the NLC as the circular is merely administrative in nature.

**[19]** With due respect, we agree with learned counsel for the appellants that the learned JC erred in choosing to follow the Federal Court decision instead of the Privy Council decision in *Garden City*.

**[20]** The Privy Council in *Garden City,* considered whether the s 128 of the NLC notice was correctly issued by the respondent. The notice under s 128 was a notice for summary action to secure remedying of the breach of a condition. The condition which was purportedly breached by the landowner in that case was the requirement for the appellant to apply under s 124 of the NLC to alter the condition an express condition on the land.

**[21]** Having scrutinised the law, the Privy Council held that the land cannot be lawfully used for agricultural or industrial purposes and there is no prohibition against using the land for building purposes.

**[22]** The Privy Council then restored the High Court's order cancelling the

s 128 notice. Hence, there is no reason for us to disagree with learned counsel for the appellants that by so doing, the Privy Council effectively held that it was not necessary for the appellant to apply for conversion under s 124. Thus, there was essentially a complete reversal of the Federal Court decision.

**[23]** We find that the Director-General's Circular is consistent with the interpretation of the Privy Council. The Circular clearly states that it is issued under s 8(1)(e) of the NLC, hence giving it a force of law and not purely administrative in nature. The said s 8(1)(e) empowers the Director-General to issue such circular relating to the administrative of the NLC.

**[24]** We reiterate, the Privy Council held that the land cannot be lawfully used for agricultural or industrial purposes and there is no prohibition against using the land for building purposes. It follows that it was not necessary for the landowner to apply for conversion, that is, an application under s 124 was not necessary in order for the landowner to use the land for building purposes. We therefore are of the view that the learned JC erred in law by deciding that she was not bound by the Privy Council decision in *Garden City*, simply because 'Section 124' was not mentioned by the Privy Council in its judgment.

**[25]** On the second issue, it is the respondents'contention that the declaratory relief sought for by the appellants is contrary to the requirement of s 124 of the NLC which authorises the state authority to vary the category of land use. In other words the relief is like asking the court to usurp the statutory authority and jurisdiction of the state authority.

**[26]** With due respect, we are of the view that such declaration is on point of law namely on category of land use; as the appellants are claiming for a declaration that the land 'are and have been since the coming into force of the National Land Code, land subject to the category of 'building'.

**[27]** Further s 41 of the Specific Relief Act 1950 allows such an application to be made; as it states:

> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief.

## CONCLUSION

**[28]** For the reasons given above, we allowed the appeal with costs. The decision of the learned JC was therefore set aside. We agree with learned counsel for the appellants that the law as it should be has been clearly expounded by the Privy Council in the case of *Garden City*. We are bound by

that decision; not to mention the existence of the Director-General's Circular 1/2002 issued by the Director-General under s 8 of the NLC which effectively recognises the decision of the Privy Council as advised by the Attorney General's Chambers.

*Order accordingly.*

Reported by Afiq Mohamad